

General Information Letter: In determining the numerator of a life insurance company's apportionment factor, "risk" in Illinois refers to insured persons in Illinois.

August 30, 2001

Dear:

This is in response to your letter dated July 24, 2001 in which you state the following:

xx (the Company) sells life insurance and annuity products within Illinois and in many other states. The company is domiciled outside of Illinois and does not write premiums other than life and annuity premiums. According to the Illinois instructions for form IL-1120, the numerator of the apportionment formula includes only property and risk premiums. Therefore, according to the instructions, the Company's apportionment should be zero. Is the Company correct in this assessment? If so, please provide the Company with written confirmation that it's Illinois apportionment should be zero if all premium receipts are for life and/or annuities.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Discussion

The substance of your question appears to be whether life insurance and annuity premiums received by the Company are risk premiums. The answer to your question is found in the definitions of the terms used within the IITA and upon Illinois Form IL-1120. These definitions are found in Black's Law Dictionary. Copies of the relevant definitions are enclosed for your files.

A risk premium is the sum paid by an insured to an insurance company as consideration for the insurance upon the "risk." Insurance is the contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the "insurer" or "underwriter;" the other, the "insured" or "assured;" the agreed consideration, the "premium;" the written contract, a "policy;" the events insured against, "risks" or "perils;" and the subject, right, or interest to be protected, the "insurable interest." Life insurance is a contract between the holder of a policy and an insurance company whereby the company agrees, in return for premium payments, to pay a specified sum (i.e., the face value or maturity value of the policy) to the designated beneficiary upon the death of the insured. Life insurance is that kind of insurance in which the risk contemplated is the death of a particular person; upon which event (if that occurs within a prescribed term, or, according to the contract, whenever it occurs) the insurer engages to pay a stipulated sum to the legal representatives of such person, or to a third person having an insurable interest in the life of such person. Annuity insurance is an insurance contract calling for periodic payments to the insured or annuitant for a stated period or for life.

It is clear from the above definitions that insurance upon the life of an individual is insurance upon a risk. Accordingly, premiums paid for life insurance are "risk premiums" within the meaning of Form IL-1120. Likewise, annuity premiums fall within such definition.

In light of the foregoing, the apportionment for the Company is not zero. Rather, on Form IL-1120, Line 5a, the Company must include the amount of total direct premiums (gross direct premiums less return premiums) from the annual statement (relating to life insurance premiums, annuity considerations, and accident and health insurance premiums, including policy, membership and other fees). The Company must include on Line 5b all premiums it receives relating to risks, including lives and annuities, in Illinois.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
Staff Attorney -- Income Tax